

AMENDED IN ASSEMBLY JULY 15, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE JUNE 3, 2003

AMENDED IN SENATE APRIL 21, 2003

## SENATE BILL

**No. 428**

### Introduced by Senator Perata

February 20, 2003

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An act to amend ~~Section 1575.5~~ *Sections 1575.5 and 100445* of, and to repeal and add Section 1575.9 of, the Health and Safety Code, and to amend Sections 14526, 14552, 14573, 14574, and 14574.1 of, and to add Sections 14552.1 and 14552.2 to, the Welfare and Institutions Code relating to adult day health care, *and declaring the urgency thereof, to take effect immediately.*

#### LEGISLATIVE COUNSEL'S DIGEST

SB 428, as amended, Perata. Adult day health care.

The California Adult Day Health Care Act provides for the licensure and regulation of adult day health centers, with administrative responsibility for this program shared between the State Department of Health Services and the California Department of Aging. Existing law establishes a license and renewal fee. *Under existing law, this fee, among others, shall be adjusted annually by a specified percentage.*

This bill would repeal the license and renewal fee and ~~would delete~~ *the requirement that the fee be adjusted. The bill, commencing January 1, 2004, would establish a license application fee, and a prescribed license and Medi-Cal certification renewal fee, with the revenues*

collected to be used to implement the preapplication process required under the bill and other services and activities.

Existing law provides that no license shall be issued or renewed for an adult day health center that is not approved as a Medi-Cal provider of adult day health services.

This bill would provide that this provision does not apply to an application for an adult day health center license received during a moratorium on the initial certification and enrollment in the Medi-Cal program of adult day health centers imposed in accordance with the bill.

The Adult Day Health Medi-Cal Law establishes adult day health care services as a Medi-Cal benefit for Medi-Cal beneficiaries who meet certain criteria.

This bill would require the State Department of Health Services to establish an adult day health care preapplication process, to include specific components, and to be completed by an applicant prior to filing an application for initial licensure as a provider, and certification as a Medi-Cal provider, of adult day health care services.

The bill would revise the Adult Day Health Medi-Cal Law, including revising designated Medi-Cal certification standards, deleting the requirement that an adult day health care provider provide services only to those participants living within its service area, as prescribed, and deleting the requirement that the State Department of Health Services conduct specified reviews prior to approving renewal of Medi-Cal certification.

Existing law provides that denial, suspension, or termination of Medi-Cal certification is considered immediate grounds for denial, suspension, or revocation of an adult day health care center license.

This bill would provide that this provision does not apply to a denial of Medi-Cal certification made pursuant to a moratorium imposed in accordance with the bill.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1575.5 of the Health and Safety Code  
2 is amended to read:



1575.5. (a) Concurrently with the submission of any application under Section 1575.2, the applicant shall apply to the state department for eligibility certification as a provider of adult day health services reimbursable under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). No license shall be issued or renewed for an adult day health center that is not approved as a Medi-Cal provider of adult day health services.

(b) This section shall not apply to an application received during a moratorium imposed in accordance with subdivision (g) of Section 1575.9. This section shall apply to an application for licensure as an adult day health care center and certification as a Medi-Cal provider of adult day health care center services received by the California Department of Aging prior to the effective date of, and subsequent to the final date of, the moratorium.

SEC. 2. Section 1575.9 of the Health and Safety Code is repealed.

SEC. 3. Section 1575.9 is added to the Health and Safety Code, to read:

1579.9. (a) Commencing January 1, 2004, each application for a new license submitted to the department shall be accompanied by a fee of five thousand dollars (\$5,000).

(b) Commencing January 1, 2004, each renewal application for a license and certification as a Medi-Cal provider of adult day health care center services shall be accompanied by a fee calculated by multiplying the license capacity of the facility times twenty dollars (\$20).

(c) (1) The revenues collected pursuant to this section, upon appropriation by the Legislature, shall be used by the California Department of Aging to implement the preapplication process required by Section 14552.1 of the Welfare and Institutions Code, and by the department and the California Department of Aging for increased assistance and monitoring of facilities such as is authorized by Section 14574.1 of the Welfare and Institutions Code, and to implement other administrative licensing and certification activities. ~~Fifty percent of the funds collected under this section shall be allocated to the department and 50 percent shall be allocated to the California Department of Aging.~~ *activities. These revenues shall be allocated first to the California*

1 *Department of Aging to cover its costs, and then to the department*  
2 *to cover its costs, to perform activities as described in this*  
3 *paragraph.*

4 *(2) Notwithstanding subdivisions (a) and (b), fees charged*  
5 *pursuant to this section may not exceed the amount reasonably*  
6 *necessary to cover the cost to the department and the California*  
7 *Department of Aging of performing the activities and services*  
8 *specified in paragraph (1).*

9 (d) Failure to pay required fees, including the finding of  
10 insufficient funds to cover bona fide business or personal checks  
11 submitted for this purpose, shall constitute grounds for denial of  
12 a license or forfeiture of a license. The fees shall be considered  
13 delinquent after 30 days of the billing date.

14 (e) Fees submitted pursuant to this section are nonrefundable.

15 (f) If the adult day health care center provider rates are reduced  
16 below the 2002–03 fiscal year rate pursuant to the Budget Act of  
17 2003, subdivision (b) shall be inoperative. If subdivision (b)  
18 becomes inoperative, the applicant for a license renewal shall  
19 submit an annual fee as determined by the department. However,  
20 the director shall waive the fee or reduce the fee to five hundred  
21 dollars (\$500) for a renewal license when the director determines  
22 that there is the expectation that no less than 50 percent of the  
23 participants during the period covered by the fee will be Medi-Cal  
24 beneficiaries or would be at risk of becoming Medi-Cal  
25 beneficiaries should institutional long-term care be required.

26 (g) (1) Commencing September 1, 2003, a statewide  
27 moratorium on the initial certification and enrollment in the  
28 Medi-Cal program of any adult day health care center shall be  
29 imposed for a period of no longer than ~~180 days~~ 360 days, subject  
30 to the following exceptions:

31 (A) *During the last 180 days of the moratorium period, the*  
32 *California Department of Aging may make exceptions to the*  
33 *moratorium for adult day health centers that are located in*  
34 *underserved areas, or that serve underserved populations.*

35 (B) *Programs of All-Inclusive Care for the Elderly (PACE)*  
36 *established pursuant to Chapter 8.75 (commencing with Section*  
37 *14590) of Part 3 of Division 9 of the Welfare and Institutions Code*  
38 *shall be exempted for the entire moratorium period.*

39 (2) The statewide moratorium enacted by this subdivision shall  
40 not apply to applications for licensure and certification as a

Medi-Cal provider of adult day health care center services submitted to the California Department of Aging prior to the effective date of the moratorium.

(3) The moratorium shall not prohibit the relocation or change of ownership of a center licensed and certified prior to the effective date of this section.

(4) The implementation of the moratorium does not require further legislative action or adoption of regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code).

*SEC. 3.5. Section 100445 of the Health and Safety Code is amended to read:*

100445. (a) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Sections 1403, ~~1575.9~~, 1729, and 1743.17 shall be adjusted annually, commencing July 1, 1988, by the percentage change printed in the Budget Act and determined by dividing the General Fund appropriation to the Licensing and Certification Division in the current state fiscal year by the General Fund appropriation to the Licensing and Certification Division in the preceding state fiscal year. Commencing July 1, 1988, the fees or charges subject to adjustment pursuant to this subdivision shall be the fees or charges that would have been payable in the prior calendar year without regard to the provisions of subdivision (b).

(b) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Sections 1729 and 1743.17 shall also be adjusted annually, commencing July 1, 1988, by a percentage determined by dividing the total amount of federal funds available for home health and private duty nursing agencies during the federal fiscal year ending on September 30 of the year immediately preceding the effective date of the change in fees, less federal funds available for home health and private duty nursing agencies for the federal fiscal year that began on October 1 of the year immediately preceding the effective date of the change in fees, by the total estimated revenue derived pursuant to Sections 1729 and 1743.17 for the fiscal year beginning July 1 of the year immediately preceding the effective date of the change in fees.

(c) The department shall by July 1 of each year publish a list of the actual numerical fee charges as adjusted pursuant to this

1 section. This adjustment of fees and the publication of the fee list  
2 shall not be subject to the requirements of Chapter 3.5  
3 (commencing with Section 11340) of Part 1 of Division 3 of Title  
4 2 of the Government Code.

5 SEC. 4. Section 14526 of the Welfare and Institutions Code  
6 is amended to read:

7 14526. Participation in an adult day health care program shall  
8 require prior authorization by the department. The authorization  
9 request shall be initiated by the provider and shall include the  
10 results of the assessment screening conducted by the provider's  
11 multidisciplinary team and the resulting individualized plan of  
12 care. Participation shall begin upon application by the prospective  
13 participant or upon referral from community or health agencies,  
14 physician, hospital, family, or friends of a potential participant.

15 SEC. 5. Section 14552 of the Welfare and Institutions Code  
16 is amended to read:

17 14552. In order to obtain certification as a provider of adult  
18 day health care under this chapter and Chapter 7 (commencing  
19 with Section 14000), the following standards shall be met:

20 (a) The provider shall have met the preapplication  
21 requirements pursuant to Section 14552.1.

22 (b) The provider shall have met all other requirements of  
23 licensure as an adult day health care center pursuant to Chapter 3.3  
24 (commencing with Section 1570) of Division 2 of the Health and  
25 Safety Code.

26 (c) The provider shall comply with requirements of this chapter  
27 regarding program and scope of services.

28 (d) The provider shall have appropriate licensed personnel.

29 (e) The provider shall employ required personnel for  
30 furnishing of required services pursuant to Section 14550  
31 consistent with commonly accepted professional standards.

32 (f) The provider shall afford to each participant all rights,  
33 including the right to be free from harm and abuse, identified in the  
34 rules and regulations adopted pursuant to Section 1580 of the  
35 Health and Safety Code.

36 (g) A provider serving a substantial number of participants of  
37 a particular racial or ethnic group, or participants whose primary  
38 language is not English, shall employ staff who can meet the  
39 cultural and linguistic needs of the participant population.



1 (h) A provider shall have organizational and administrative  
2 capacity to provide services under the provisions of this chapter.

3 SEC. 6. Section 14552.1 is added to the Welfare and  
4 Institutions Code, to read:

5 14552.1. (a) Commencing 180 days after the effective date of  
6 the Budget Act of 2003, the California Department of Aging shall  
7 establish an adult day health care preapplication process that shall  
8 be completed by an applicant prior to filing an application for  
9 initial licensure as a provider, and certification as a Medi-Cal  
10 provider, of adult day health care services under this chapter and  
11 Chapter 7 (commencing with Section 14000). The preapplication  
12 process shall consist of an orientation program and a written  
13 proposal for the provision of adult day health care services.

14 (b) (1) The preapplicant shall attend an eight-hour orientation  
15 program provided by the California Department of Aging or by a  
16 nonprofit provider organization approved by the California  
17 Department of Aging pursuant to paragraph (3). The orientation  
18 shall include, but not be limited to, the following content areas:

19 (A) The regulatory and statutory requirements for adult day  
20 health care.

21 (B) Operational responsibility of the applicant and staff.

22 (C) Financial considerations for startup and ongoing operating  
23 costs.

24 (D) The preapplication process and the licensing and  
25 certification process.

26 (E) Obtaining data regarding demographics and determining  
27 need for adult day health care services.

28 (2) The preapplicant shall be provided a preapplication  
29 package at the orientation, upon request.

30 (3) To be approved by the California Department of Aging to  
31 conduct the orientation training as described in paragraph (1), the  
32 nonprofit provider organization shall comply with all of the  
33 following requirements:

34 (A) Provide evidence that orientation instructors have at least  
35 five years experience in either training adult day health care  
36 providers or in the provision of adult day health care services.

37 (B) Submit a curriculum and list of instructors for review and  
38 approval by the California Department of Aging.

1 (C) Maintain a record of all orientation attendees and provide  
2 the California Department of Aging with the attendee information  
3 within 15 working days or upon request.

4 (4) A preapplicant who is already licensed as an adult day  
5 health care center shall not be required to attend an orientation if  
6 the last orientation attended was within 12 months of the next  
7 scheduled orientation.

8 (c) The preapplicant shall submit to the California Department  
9 of Aging a proposal that includes, but is not limited to, all of the  
10 following:

11 (1) A program plan as specified in Section 14552.2.

12 (2) Operational policies and procedures identified in the rules  
13 and regulations adopted pursuant to Section 1580 of the Health and  
14 Safety Code.

15 (3) A marketing plan that includes, but is not limited to, all of  
16 the following:

17 (A) Data that describes the population base for the identified  
18 geographic area proposed to be served by the adult day health care  
19 center, including, but not limited to, all of the following:

20 (i) The number of persons over the age of 65 years.

21 (ii) The number of persons over the age of 65 years who are  
22 potential adult day health care users.

23 (iii) The number of Medi-Cal beneficiaries.

24 (iv) The number of adults with disabilities.

25 (v) The number of adults with disabilities who are potential  
26 adult day health care users.

27 (vi) If a specialty population will be served, such as persons  
28 with developmental disabilities, persons with mental disabilities,  
29 or persons of a special racial or ethnic group, the number of  
30 persons in this specialty population who are potential adult day  
31 health care users.

32 (vii) The licensed capacity of adult day health care centers,  
33 including programs for all-inclusive care for the elderly, within a  
34 10-mile radius of the proposed facility.

35 (B) The center's plan for marketing its services to the target  
36 population, including methods and marketing messages.

37 (4) A plan to coordinate with and utilize other services in the  
38 home and community based continuum of care within the  
39 identified geographic area.

1 (5) A proforma budget and monthly cashflow projection for 24  
2 months.

3 (d) The preapplicant shall review the proposal with the  
4 California Department of Aging. The California Department of  
5 Aging shall notify the preapplicant within 30 days of receipt of the  
6 proposal of a date, time, and place for the review. The review,  
7 which may be done by telephone or in person at the department's  
8 discretion, shall include, but not be limited to, a discussion of the  
9 specific portions of the proposal that are incomplete.

10 (e) If, within 120 days of the review, the preapplicant has not  
11 submitted a complete proposal, the preapplicant shall be notified  
12 that the proposal is considered withdrawn and a new proposal is  
13 required. A determination by the California Department of Aging  
14 that the proposal has been withdrawn is not subject to appeal or  
15 hearing pursuant to Sections 14123 and 14574.

16 (f) Upon notification by the California Department of Aging  
17 that a preapplication process is complete, a preapplicant may  
18 proceed to apply for licensure and certification as a Medi-Cal  
19 provider of adult day health care center services pursuant to Article  
20 3 (commencing with Section 1575.2) of Chapter 3.3 of the Health  
21 and Safety Code.

22 (g) This section shall be implemented only to the extent funds  
23 are made available for the purposes of this section in the annual  
24 Budget Act or another statute.

25 (h) Implementation of the adult day health care center  
26 preapplication process required by this section, including the  
27 approval process for an organization to provide training, does not  
28 require adoption of regulations pursuant to the Administrative  
29 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
30 Part 1 of Division 3 of Title 2 of the Government Code).

31 SEC. 7. Section 14552.2 is added to the Welfare and  
32 Institutions Code, to read:

33 14552.2. (a) "Program plan," as required under paragraph  
34 (1) of subdivision (c) of Section 14552.1, means a written  
35 description of the adult day health care center's philosophy,  
36 objectives, and processes for providing required services to the  
37 participant populations.

38 (b) The program plan shall include any of the following  
39 elements, as requested by the California Department of Aging, and  
40 shall be submitted as required in Sections 14552.1 and 14574.1:

1 (1) The total number of participants the center proposes to  
2 serve, or currently serves, daily.

3 (2) A profile of the participant population the center proposes  
4 to serve, or currently serves, that includes a description of the  
5 specific medical, social, and other needs of each population.

6 (3) A description of the specific program elements and services  
7 that addresses the medical, social, and other needs of each  
8 participant population that the center proposes to serve, or  
9 currently serves, as specified in paragraph (2). “Program  
10 elements” means the components of an adult day health care  
11 program, as specified in Section 14550.

12 (4) A description of the specialized professional and program  
13 staff that will provide, or currently provide, the adult day health  
14 care center’s program services, as specified in paragraph (3), and  
15 that staff’s responsibilities. The plan shall demonstrate that the  
16 adult day health care center is organized and staffed to carry out  
17 the requirements as specified in the rules and regulations adopted  
18 pursuant to Section 1580 of the Health and Safety Code.

19 (5) An in-service training plan for each center staff member to  
20 commence within the first six months of employment. The  
21 training plan shall address, at a minimum, the specific medical,  
22 social, and other needs of each participant population the center  
23 proposes to serve, as specified in paragraph (2).

24 (6) A sample individual plan of care for each specialty  
25 population the adult day health care center proposes to serve, or  
26 currently serves, and a sample of a one-week schedule of daily  
27 program services for each sample individual plan of care. The  
28 individual plan of care shall demonstrate the specific medical,  
29 social, and other needs of each participant population the adult day  
30 health center proposes to serve.

31 (7) A plan for a behavior modification program if such a  
32 program will be used as a basic intervention for meeting the needs  
33 of a special population, such as persons with developmental  
34 disabilities or persons with mental disabilities.

35 (c) This section shall be implemented only to the extent funds  
36 are made available for the purposes of this section in the annual  
37 Budget Act or another statute.

38 (d) The implementation of the program plan requirements does  
39 not require adoption of regulations pursuant to the Administrative

1 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
2 Part 1 of Division 3 of Title 2 of the Government Code).

3 SEC. 8. Section 14573 of the Welfare and Institutions Code  
4 is amended to read:

5 14573. (a) Initial Medi-Cal certification for adult day health  
6 care providers shall expire 12 months from the date of issuance.  
7 The director shall specify any date he or she determines is  
8 reasonably necessary because of the record of the applicant and to  
9 carry out the purposes of this chapter, but not more than 24 months  
10 from the date of issuance, when renewal of the certification shall  
11 expire. The certification may be extended for periods of not more  
12 than 60 days if the department determines it to be necessary.

13 (b) Before certification renewal, the provider shall submit with  
14 the application for renewal a report according to department  
15 specifications that includes an analysis of income and  
16 expenditures, continued demonstrated community need, services,  
17 participant statistics and outcome, and adherence to policies and  
18 procedures.

19 (c) Prior to approving renewal of Medi-Cal certification, the  
20 California Department of Aging shall conduct a financial review  
21 and onsite medical and management reviews. The reviews shall be  
22 conducted by a team of persons with appropriate technical skills.  
23 The management review shall be performed by the entity  
24 responsible for directing and coordinating the program, as  
25 specified in the interagency agreement entered into pursuant to  
26 Section 1572 of the Health and Safety Code.

27 (d) Where the director determines that the public interests  
28 would be served thereby, a public hearing may be held on any  
29 renewal application subject to this section. The findings of the  
30 departmental program and licensing reviews and the provider's  
31 annual evaluation report shall be presented at the hearing.

32 SEC. 9. Section 14574 of the Welfare and Institutions Code  
33 is amended to read:

34 14574. (a) The director shall terminate the Medi-Cal  
35 certification of any adult day health care provider at any time if he  
36 or she finds the provider is not in compliance with standards  
37 prescribed by this chapter or Chapter 7 (commencing with Section  
38 14000) or regulations adopted pursuant to these chapters. The  
39 director shall give reasonable notice of his or her intention to  
40 terminate the certification to the provider and participants in the

1 center. The notice shall state the effective date of, and the reason  
2 for, the termination.

3 (b) The denial, suspension, or termination of certification shall  
4 be considered immediate grounds for denial, suspension, or  
5 revocation of the license.

6 (c) Proceedings to deny an application for certification or  
7 licensure, terminate or suspend certification, or revoke or suspend  
8 licensure shall be consolidated whenever possible.

9 (d) The California Department of Aging and the department  
10 shall coordinate an action or actions to the extent appropriate to  
11 ensure consistency and uniformity.

12 (e) The provider shall have the right to appeal the department's  
13 decision made pursuant to Section 14123.

14 (f) Subdivision (b) does not apply to a denial of Medi-Cal  
15 certification made pursuant to a moratorium imposed in  
16 accordance with subdivision (g) of Section 1575.9 of the Health  
17 and Safety Code.

18 SEC. 10. Section 14574.1 of the Welfare and Institutions  
19 Code is amended to read:

20 14574.1. (a) Every adult day health care center shall be  
21 periodically inspected and evaluated for quality of care by a  
22 representative or representatives designated by the director, unless  
23 otherwise specified in the interagency agreement entered into  
24 pursuant to Section 1572 of the Health and Safety Code.  
25 Inspections shall be conducted prior to the expiration of  
26 certification, but at least every two years, and as often as necessary  
27 to ensure the quality of care being provided. As resources permit,  
28 an inspection may be conducted prior to, as well as within, the first  
29 90 days of operation.

30 (b) If, as a result of the inspection, the department or the  
31 California Department of Aging, as specified in the interagency  
32 agreement, determines that the adult day health care center has  
33 serious deficiencies that pose a risk to the health and safety of the  
34 participants, the department or the California Department of  
35 Aging, as specified in the interagency agreement, may  
36 immediately take any of the following actions, including, but not  
37 limited to:

38 (1) Require a plan of correction, including as requested, a  
39 program plan pursuant to Section 14552.2.

40 (2) Limit participant enrollment.

1 (3) Prohibit new participant enrollment.

2 (c) The provider shall have the right to dispute an action taken  
3 under paragraphs (2) and (3) of subdivision (b). The department  
4 or the California Department of Aging, as specified in the  
5 interagency agreement, shall accept, consider, and resolve  
6 disputes filed pursuant to this subdivision in a timely manner. The  
7 dispute resolution process shall be determined by the California  
8 Department of Aging in consultation with the department.

9 (d) The director shall ensure that public records accurately  
10 reflect the current status of any potential actions including the  
11 resolution of disputes.

12 SEC. 11. Section 2 of this act shall become operative on  
13 January 1, 2004.

14 SEC. 12. *This act is an urgency statute necessary for the*  
15 *immediate preservation of the public peace, health, or safety*  
16 *within the meaning of Article IV of the Constitution and shall go*  
17 *into immediate effect. The facts constituting the necessity are:*

18 *In order to make necessary statutory changes to implement the*  
19 *Budget Act of 2003 at the earliest possible time, it is necessary that*  
20 *this act take effect immediately.*

